

RESOLUTION NO. 16-025

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP16-0009 TO INSTALL A SMALL CELL ANTENNA AND ASSOCIATED EQUIPMENT ON AN EXISTING STREET LIGHT POLE NEAR 1043 OREGON WAY (APN: 026-28-001)

WHEREAS, on May 12, 2016, Mobilitie, LLC submitted a Conditional Use Permit application (UP16-0009) to install one cellular antenna and associated equipment on an existing street light pole owned by the City within the public right-of-way. The project is located within the Commercial Zoning district; and

WHEREAS, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt under CEQA; and

WHEREAS, on August 24, 2016, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project is categorically exempt from further environmental review pursuant to Class 3, Section 15303 (New Construction or Conversion of Small Structures) of the Guidelines for the California Environmental Quality Act in that the project entails installation of an cellular antenna and associated equipment on an existing street light pole.

Section 3: *Conditional Use Permit [Section XI-10-57.04-1(F)] – The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP16-0009:*

- a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare; and*

The project meets this finding given that the RF Site Compliance Report dated April 21, 2016 prepared to analyze the project's compliance with relevant federal radio frequency ("RF") emissions regulations concluded that the maximum power density of the proposed facility is less

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than 1% of the FCC's Occupational limit and General Public limit thresholds. In addition, the project shall be required to install RF emissions alert signs and provide the appropriate safeguards to reduce exposure to RF emissions. As such, the wireless communication facility at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

b. The project is consistent with the Milpitas General Plan.

The project meets this finding because it will provide additional data capacity for wireless telecommunication services that are needed for existing and future community residents, which is consistent with the guiding principle in the Milpitas General Plan in that the city should make land use decisions that improve the City's fiscal condition by managing the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities, per Policy 2.d-G-1.

c. The project is consistent with the Milpitas Zoning Ordinance.

The project is consistent with this finding because wireless communication facilities are conditionally permitted uses in all zoning districts and it conforms to all applicable standards set forth in Section XI-10-13.09 (Wireless Communications Facilities) of the Zoning Ordinance, as well as establishes consistency with the General Plan by providing utilities of the highest standards commensurate with the present and anticipated needs of the existing and future community. As proposed, the use will not impact parking requirements or height limits, substantially degrade views from the public right-of-way, or detract from the character of the community.

Section 4: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 16-025 approving Conditional Use Permit No. UP16-0009, based on the above Findings and Conditions of Approval attached hereto as Exhibit 1 and incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on August 24, 2016.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on August 24, 2016 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
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COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Rajeev Madnawat				
Hon Lien				
Larry Ciardella				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

**CONDITIONS OF APPROVAL FOR
WIRELESS TELECOMMUNICATION FACILITY
CONDITIONAL USE PERMIT AMENDMENT NO. UP16-0009
NEAR 1043 OREGON WAY (APN: 026-28-001)**

General Conditions

1. General Compliance. The applicant and owner of the wireless equipment, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit Amendment No. UP16-0009 (“Permit”) shall have no force or effect unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 1. Acceptance of this Permit by Permittee; and
 2. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. (P)
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until

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Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the adoption of this Resolution.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies, including, but not limited to the maximum radio frequency radiation emission limits set forth in the Federal Communications Commission's Office of Engineering and Technology ("OET") Bulletin 65. Failure to operate the facility permitted herein in accordance with OET Bulletin 65 shall be grounds for revocation of this Permit. (CA/P)
11. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs,

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attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

12. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
13. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
14. Permittee shall develop and operate the approved project in conformance with the plans approved by the Planning Commission on August 24, 2016, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, project description, or other approved submittal shall require that, prior to the issuance of planning approval, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. (P)

15. Prior to building permit issuance, Permittee shall file a copy of an executed agreement with the City of Milpitas to license the rights to occupy space needed to install the antenna on the City-owned street light pole. In approving this Conditional Use Permit, and imposing this condition, the Planning Commission is acting solely in its regulatory capacity, and the Permittee shall not consider this Conditional Use Permit as an approval to use the street light pole by the City of Milpitas, as the owner of the street light pole. Nor does it in any way whatsoever bind the City of Milpitas as owner of the street light pole to enter into any license agreement with the Permittee, except on financial and other terms as may be determined to be acceptable to the City of Milpitas acting in its proprietary capacity and in its sole discretion. (P)
16. Stealth features. Permittee proposes to and is hereby authorized to install the approximately three-foot omni-directional antenna and associated equipment shown on its approved plans on an existing 26' tall light pole, thereby increasing the overall height of the pole by only 8.67%. Permittee shall cause all new equipment and antenna components to be painted to match the existing light pole. Building permit plans shall indicate the existing pole materials and colors to ensure consistency and compatibility with proposed materials and colors. Collectively, these minimal additions and camouflaging elements are recognized as stealthing features by the City of Milpitas. It is on the basis of the inclusion of these stealthing features that the Planning Commission for the City of Milpitas has determined that

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the proposed facility does not affect the public health, safety, and welfare, or the aesthetic quality of life by creating unattractive appurtenances to building and open areas, by blocking or degrading views, or by creating visual clutter. (P)

17. Encroachment Permit. Prior to any work in the public right-of-way and/or any public easement, Permittee shall obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan (per the latest California Manual on Uniform Traffic Control Devices standards) to be reviewed and approved by the Engineering Department. (E)
18. Conflicts with improvements. Permittee shall remove, at its expense and without expense to the City, any or all of the approved facility when such removal is deemed necessary by the City by reason of any change of grade, alignment, or width of any public right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, public right-of-way improvements, or for any other construction, repair, or improvement to the public right-of-way.
19. City access. The City reserves the right of its employees, agents, and designated representatives to inspect permitted facilities and property upon reasonable notice to Permittee. In case of an emergency or risk of imminent harm to persons or property within the vicinity of permitted facilities, the City reserves the right to enter upon the site of such facilities and to support, disable, or remove those elements of the facilities posing an immediate threat to public health and safety. The City shall make an effort to contact Permittee, prior to disabling or removing wireless telecommunications facility elements.

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(PD) = Police